

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GREGORY LEE, pro se plaintiff
DIN. NO. # 07A4990
Box 51 (G.M.C.F.)

Comstock, New York, 12821

Date: October, 22nd, 2008

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

Filed: By U.S. mail (E.C.W)

OCT 24 2008

HONORABLE DAVID R. HOMER
United States Magistrate Judge
U.S. Courthouse, 445 Broadway
Albany, New York, 12207

LAWRENCE K. BAERMAN, CLERK
ALBANY

RE: GREGORY V. LEE, \$4,675.00 IN U.S. CURRENCY, ONE 1997 Ford expedition, VIN#
1FMFU18L4VLB74261, N.Y. LIC. NO. #DGB-8080 VS. The city of KINGSTON
New York Police Department, et al., CASE NO. # 1:08-CV-396(DNH/DRH)

PLAINTIFF'S Letter of objection to courts order and report pursuant
----- To 28 U.S.C. § 636(b)(1) -----

Dear Judge Homer,

CONSISTENT with the courts October, 17th, 2008 order
recommending a report for dismissal of the above stated action without
prejudice in its entirety, in which was postmarked on October, 20th, 2008
and received by me on October, 21st, 2008, The plaintiff respectfully submits
this instant letter of objection pursuant to 28 U.S.C. § 636(b)(1) in
the above referenced case for filing with the clerk of the court within the
required ten (10) day period of compliance for written objections by parties
to this action.

Magistrate Judge Homer has filed a order/report/recommendation for the dismissal
of this action for the plaintiff's lack of compliance with the August, 24th, 2008

order requiring the plaintiff to file with the clerk of the court an amended complaint with sufficient copies for service upon the twenty (20) defendants or provide sufficient copies of the original complaint for service of process on the defendants by the United States Marshalls Service by October, 1st, 2008 or face dismissal of his action.

The plaintiff now opposes his honor's recommendation for dismissal due to the lack of compliance because the plaintiff's lack of compliance was due to no fault of the plaintiff's own unwillingness to comply with the court's order.

The court is very well aware that the plaintiff is indigent and incarcerated and as such the plaintiff is subject to the whims and capricious nature of the authorities within the facilities in which he is being held.

The plaintiff has repeatedly filed letters with the court informing it of the facilities willingness to comply with the plaintiff's court orders and the hostile nature of the staff members who are deliberately indifferent to the court's orders due to a lack of understanding of the law.

The regular facility correctional officers are trained not to believe or trust anything an inmate tells them and contact with supervisors is insulated by the chain of command, which the officers take as a personal assault or affront should an inmate skip above them in that command. These officers are the people in charge of the daily activities within the facility such as the law library and its copying machine and procedures, as well as the responsibility of vouchering request for postage advances.

In light of these difficulties in the plaintiff's ability to comply through the administrative process the plaintiff has sought out numerous informal and formal avenues of complaints including contacting the court in the hope that the court itself would intervene and issue an order directly to the commissioner or facility superintendent so that they would issue the order to the proper facility staff members which would then be accepted and followed as opposed to any paper in the possession of the plaintiff.

In the instant case the plaintiff, in compliance with the court's order request indigent

advanced for postage and photo copies directly from the deputy superintendent of programs (Karen Lapolt) by letter on September, 25th, 2008, well in advance of the court's October, 1st, 2008, deadline, as it only takes one day for a interdepartmental communication to be returned, and one day's mailing for mail to reach Albany from this facility.

When the plaintiff failed to receive a response to his request by the court's ordered deadline the plaintiff checked with the p.m. Law Library Officer on October, 1st, 2008, to see if the request was received directly and the request was not present.

On October, 2nd, 2008, the plaintiff spoke personally with Dep. Supt. of programs K. Lapolt while at his prison work program and was told that if she received it (request) she would have already signed off on the request and forwarded it back to the plaintiff.

On October, 6th, 2008, the plaintiff again spoke with the p.m. Law Library Officer and Dep. Supt. of programs K. Lapolt and informed them both that he had not received his request back or his court order, and was told by them both that the matter would be investigated and my request and legal work found.

On October, 10th, 2008, the plaintiff was called from his facility work program to the Law Library where he was greeted by the A.M. Law Library Officer C. Poirier, who has been a major reason and problem in the plaintiff's past difficulty in the plaintiff's previous ability to comply with the court's directives.

Ofc. C. Poirier, presented the plaintiff with his court order and his initial request which on its face was endorsed for approval on September, 25th, 2008, by the Deputy Supt. of programs, and endorsed by Ofc. C. Poirier as being received by him on October, 7th, 2008, the plaintiff was thereupon requested to sign a line at the bottom of the request dated October, 10th, 2008, to show that the court's order had been returned to the plaintiff.

Upon inquiry to Ofc. C. Poirier as to where the plaintiff's request and court

order had been For The previous Fourteen (14) days he WAS GIVEN NO explanation to give to The court so The plaintiff immediately got a copy of his request and Filed A grievance complaint about The matter and The Facilities lack of Timely Access To The courts .

The plaintiff Then immediately sent The court a copy of his request, The grievance complaint, and an explanation of the situation in its entirety, along with a request For The grace of a final extension now That his request has been Finally Found and approved !

It is the plaintiff's position that his amended complaint has long since been completed and he does not have a willfulness To not comply with any of The courts orders and That any lack of compliance thus far was due To The Facilities administrative conduct and not any bad faith of his own will .

Dismissal, such as The court seeks To recommend, is indeed a permissible sanction under Fed. R. Civ. P. 37(b)(2). But under The circumstances of this case, it is an extreme penalty which should only be resorted to only when a party has demonstrated willfulness or bad faith and has been warned of The risk of dismissal For Failure To comply with court orders. See, e.g., *Valentine v. Museum of modern Art*, 29 F.3d 47, 50 (2d Cir. 1994); *Bobal v. Rensselaer Polytechnic Inst.*, 916 F.2d 759, 764 (2d Cir. 1990); *Ireland v. County of Essex*, No. 1:00 CV 1834, 2005 WL 1388942, at *2 (N.D.N.Y. June 8, 2005).

It is For The above reasons That the plaintiff objects to The courts order/report/-recommendation in the present instance, and now seeks the courts grace and judgment to resolve This matter in the continuation of this action.

Dated: October, 22nd, 2008
Comstock, New York

Respectfully submitted

Gregory Lee, #07A4990

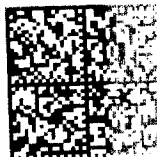
* Request, letter, grievance complaint *
and letter of explanation on file with
clerk of The court (10/14/08)

GREAT MEADOW CORRECTIONAL FACILITY

BOX 51
COMSTOCK, NEW YORK 12821-0051

NAME: Gregory Lee DIN: 07A4440

Correctional Facility



02 12
0004638997
MAILED FROM ZIP CODE 12821
\$00.42⁰⁰
OCT 23 2008

**U.S. DISTRICT COURT
N.D. OF N.Y.
FILED**

OCT 24 2008

**LAWRENCE K. BAERMAN, CLERK
ALBANY**

Clerk, U.S. District Court
James T. Foley U.S. courthouse
445 Broadway - Room 509
Albany, New York, 12207-2936

1220762925 0012